IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPLICATION No.3545 OF 2007

SHIVAJI DATTATRAY PAHINKAR ..Applicant.

Vs.

The STATE OF MAHARASHTRA ..Respondent.

Mr A. P. Mundargi, Sr. Counsel, with S.L. Maneshinde, Sayaji Nangre, Advocates for the Applicant.

Ms A. S. Pai, A.P.P. for the State.

CORAM: V. C. DAGA,J.

DATED: 2ND NOVEMBER, 2007.

ORDER:-
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1. Heard Mr A. P. Mundargi,Senior learned counsel for the applicant and Special Prosecutor Ms Pai for the respondent.

2. Perused application and the material available on record.

FACTUAL BACKDROP:-
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3. The factual backdrop giving rise to the

present application, in nutshell, is as under:-

4. The applicant is the Divisional Joint Registrar, Co-operative Societies having his office at Malhotra House, Mumbai. Prior to his joining as Divisional Joint Registrar on 4.1.2007 there was one Revision Application No. 709 of 2006 pending before the then Divisional Joint Registrar of Co-operative Societies filed by the complainant Shri. Bharat Shetty on 24.11.2006. It is not relevant to mention as to what reliefs are claimed by Shri Shetty in his Revision Application No. 709 of 2006 for the purposes of deciding this application.

5. On 24.11.2006, the then Divisional Joint Registrar, Shri Sheshrao Sangle was pleased to grant stay in the said revision application. After, the then, Divisional Joint Registrar, Sangle granted the stay, the matter was adjourned twice and it was kept on 18.1.2007. It appears for the first time, the matter appeared before the applicant on 1.2.2007 and, thereafter, it was adjourned from time to time, on 21.2.2007, 13.3.2007, 29.3.2007,

2.4.2007, 16.4.2007, 30.4.2007, 11.6.2007, 26.6.2007, 12.7.2007, 9.8. 2007 and it was again adjourned to 18.10.2007.

6. It appears that the applicant came to know that complainant Bharat Shetty, who had filed the revision application No. 709 of 2006, had lodged a complaint against the present applicant for the offence under Section 7 of the Prevention of Corruption Act.("the Act") The applicant, apprehending his arrest at the hands of the respondents in connection with non bailable offence, covered under Section 7 of the Act, filed anticipatory bail application before the Additional Sessions Judge, Greater Mumbai,("the Court below" for short) which came to be rejected by a well reasoned order dated 22.10.2007. Now, the applicant has invoked jurisdiction of this Court under Section 438 of the Criminal Procedure Code ("the Code") to seek pre-arrest bail. During the course of hearing some events have taken place before this Court which need to be placed on record.

EVENTS BEFORE THIS COURT:
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7. The application was heard on 24.10.2007. However, copy of the reasoned order passed by the Court below rejecting anticipatory bail application was not available. Hence, matter was adjourned to 25.10.2007 and thereafter on 26.10.2007 and 29.10.2007 by consent of parties extending the life of the interim bail order which was already operating in favour of the applicant.

8. On 26th October, 2007, during the course of hearing, conversation dated 29.6.2007 alleged to be between the complainant and the accused followed by another dated 8.10.2007 between the same parties, were sought to be relied upon by the prosecution.

9. Learned counsel for the applicant, during the course of hearing, made a statement that the applicant is admitting one of the two conversations dated 8.10.2007 referred to by the prosecution. Consequently, learned counsel for the applicant was asked; whether the applicant would be willing to make this admission on oath. To that the answer was in affirmative. Consequently, time was granted

to the applicant to file affidavit in support of his statement. The matter was adjourned to 29.10.2007.

10. On 29.10.2007 the applicant filed his affidavit, duly affirmed on 26.10.2007; wherein, he has admitted his conversation with complainant dated 8.10.2007.

11. This Court, after receiving the above affidavit, admitting the conversation dated 8.10.2007, thought it fit to hear both conversations in the Chamber, in the presence of prosecutor, but in the absence of the applicant - accused and his Advocates. Accordingly, both conversations were heard on 30-10-2007. Thereafter, on the next day, this application for anticipatory bail was posted for hearing in the open Court. Accordingly, application was heard, permitting rival parties to make their respective submissions.

RIVAL SUBMISSIONS:

12. Mr Mundargi, learned Senior Counsel for the applicant urged that in absence of any

successful trap, at the most, the applicant could be charged for the offence under Section 7 of the Act on the basis of the allegations of having made demand from the complainant. He submits that it is not uncommon that such types of allegations are always made against the high ranking public officials who are require to deal with administrative and quasi judicial matters involving heavy stakes. He, thus, submits that the allegations made by the complainant are false, concocted and *mala fide.*

13. Mr Mundargi further submits that the F.I.R. was lodged on 29.6.2007. Practically for a period of three and half months alleged offence was not investigated for which vague explanation has been furnished, which can hardly be said to be sufficient explanation. He further submits that as per his instructions, on 8.10.2007, when the complainant approached the applicant,the complainant was practically, driven out by the complainant from his chamber. He, thus, submits that the conversation dated 8.10.2007 does not implicate the present applicant. On the contrary, it completely exonerates him.

14. Mr Mundargi further went on to contend that during the course of investigation the custodial investigation is not necessary to investigate offence under Section 7 of the Act. He, thus, submits that this is a fit case for grant of anticipatory bail.

15. Per contra,learned Special Prosecutor, Ms.Pai submits that applicant took charge as a Divisional Joint Registrar at Malhotra House on 4.7.2007. She submits that the revision filed by the complainant was not tenable before the Joint Sub-Registrar. Such a revision petition could not have been adjourned from time to time, right from 18.1.2007 to 18.10.2007.

16. Ms Pai further urged that first conversation dated 29.6.2007 fully implicates the applicant. She further submits that on 29.6.2007 the revision petition was not fixed for hearing before the present applicant, since it was already adjourned to 12.9.2007 on 26.7.2007. As such. it was not necessary for the applicant to entertain complainant in his chamber and to initiate the talks with him.

17. Ms Pai further submits that as per the complaint of the complainant, he had preliminary talks with the applicant in Orchid Hotel, near Mumbai Airport, which, according to her, is clear from the conversation dated 29.6.2007. According to her, this conversation admits negotiations between the applicant and the complainant since there is a reference to the said meeting.

18. Ms Pai further submits that the applicant approached to the D.N. Nagar Police Station on 14.10.2007 to lodge one N.C. He wanted the Police Station Officer to take it on record showing as if it was filed on 12.10.2007. In other words, applicant wanted to get his complaint anti dated so as to prepare evidence for his defence. She states that the statement of Police Officer in this behalf has been recorded who has stated that bribe of Rs. 10,000/- was offered to him by the complainant to do this favour.

19. Mrs Pai further submits that the conversation dated 29.6.2007 between the applicant and the complainant makes a

reference to two middlemen/touts. She, thus, submits that it is necessary for the prosecution to take applicant in the custody so as to prevent him from constructing false evidence for his defence and to play with prosecution evidence. In her submission, it is also necessary for the prosecution to find out, the middlemen, who are indulging in bribing the public servants so as to burst the racket, if any, operating in this behalf. Hence, in her submission, in public interest investigation is necessary.

20. Ms Pai reiterates that demand by the applicant is clear, as such this is not a fit case for grant of anticipatory bail.

21. Ms Pai further went on to urge that the crime alleged against the applicant is a serious crime with which the entire society is infected. It is, therefore, necessary to investigate such a crime with expeditious despatch considering larger interest of the society.

22. Ms Pai also sought to place reliance on some of the judgments of the Apex Court

dealing with the question of grant of anticipatory bail, which are referred to while considering the question of grant of this application.

PARAMETERS FOR GRANT OF PRE-ARREST BAIL.

23. The Apex Court in the case of **Bharat Chaudhary and Anr Vs. State of Bihar and Anr. (2003) 8 S.C.C. 77** observed that the object of Section 438 of the Code is to prevent undue harassment of the accused persons by pretrial arrest and detention. The gravity of the offence is an important factor to be taken into consideration while granting anticipatory bail so also the need for custodial interrogation, but these are only factors that must be borne in mind by the courts concerned while entertaining a petition for grant of anticipatory bail.

24. In the case of **Adri Dharan Das V. State of W.B. (2005) 4 S.C.C. 303 the Apex Court** said that the power exercisable under Section 438 of the Cr.P.C. is somewhat extraordinary in character and it is only in exceptional cases where it appears that the person may be

falsely implicated or where there are reasonable grounds for holding that a person accused of an offence is not likely to otherwise misuse his liberty, then power is to be exercised under Section 438 of the Code. The power being of important nature it is entrusted only to the higher echelons of judicial forums i.e.the Court of Session or the High Court. It is the power exercisable in case of an anticipated accusation in non-bailable offences.

25. The Apex Court in the case of **Gurbaksh Singh v. State of Punjab, A.I.R. 1980 S.C. 1632** observed, as follows:-

> "We would, therefore, prefer to leave the High Court and the Court of Sessions to exercise their jurisdiction under Section 438 by a wise and careful use of their discretion which, by their long training and experience, they are ideally suited to do. The ends of justice will be better served by trusting these Courts to act objectively and in consonance with principles governing the grant of bail which are recognised over the years, than by divesting them of their discretion which the Legislature has conferred upon them, by laying down inflexible rules of general application."

26. The Apex Court in the case of **State**

represented by the C.B.I. Vs. Anil Sharma, (1997) 7 Supreme Court cases 187 while emphasizing importance of custodial investigation observed as follows:

> "6. We find force in the submission of the CBI that custodial interrogation is qualitatively more elicitation-oriented than questioning a suspect who is well ensconced with a favourable order under Section 438 of the Code. In a case like this effective interrogation of a suspected person is of tremendous advantage in disintering many useful information and also materials which would have been concealed. Success in such interrogation would elude if the suspected person knows that he is well protected and insulated by a pre arrest bail order during the time he is interrogated. Very often interrogation in such a condition would reduce to a mere ritual. The argument that the custodial interrogation is fraught with the danger of the person being subjected to third-degree methods need not be countenanced, for, such an argument can be advanced by all accused in all criminal cases. The Court has to presume that responsible police officers would conduct themselves in a responsible manner and that those entrusted with the task of disintering offences would not conduct themselves as offenders."
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> (Emphasis supplied)

27. In the case of **K.K. Jerath v. Union Territory, Chandigarh, 1998 Cri.L.J. 2555** and placed reliance on following observations:-

"5. We do not wish to enter into any detailed discussion on these legal aspects raised by the learned counsel for the respondents as this Court in the several decisions referred to by the learned counsel for the petitioner has explained the scope of the provisions of Articles 20 (2) and 21 of the Constitution and Section 486 of the Code of Criminal Procedure and their inter-relationship. We may only State in considering a petition for grant of bail necessarily if public interest requires detention of citizen in custody for purpose of investigation could be considered and rejected as otherwise there could be hurdles in the investigation even resulting in tampering of evidence."

(Emphasis supplied)

28. A three Judges Bench of the Apex Court in the case of **Pokar Ram v. State** of **Rajasthan**, **A.I.R. 1985 S.C. 969** (Para 5) observed as under:-

"Relevant considerations governing the Court's decision in granting anticipatory bail under S. 438 are materially different from those when an application for bail by a person who is arrested in the course of investigation as also by a person who is convicted and his appeal is pending before the higher Court and bail is sought during the pendency of the appeal."

29. Similar observation have been made by the Apex Court in the case of **Anil Sharma**

(supra) "The consideration which should weigh with the Court while dealing with a request for anticipatory bail need not be the same as for an application to release on bail after arrest."

ISSUE:-

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30. The issue before this Court is : whether the view taken by learned Additional Sessions Judge, Gr. Mumbai needs to be reversed and, consequently, applicant is liable to be enlarged on anticipatory bail?

CONSIDERATION:

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31. After having gone through the impugned order of the learned Additional Sessions Judge, Greater Bombay, one can safely come to the conclusion that all rival contentions which were advanced before this Court were advanced before the Court below. Each and

every contention thereof has been dealt with in detail by reasoned order which can be catalogued hereinbelow.

(a) The Court has taken into account the factum of pendency of Revision Application No. 790 of 2006 which was adjourned by the applicant from time to time together with the circumstances resulting in such adjournments.

(b) The Court has also taken into account the prima facie existence of the meeting at Orchid Hotel, near Airport at Mumbai together with the transcript of the conversation between the applicant and the complainant running into 28 pages.

(c) The Court has also taken into account the attempt on the part of the applicant to file N.C. against the complainant and attempt to get anti dated acknowledgement though it was sought to be tendered/submitted on 14.10.2007 at D.N. Nagar Police Station.

(d) An attempt on the part of the complainant to offer Rs. 10,000/- to P.I. Dayanand Shankar Taral by way of bribe to P.I. for doing this job was also appreciated by the Court below.

(e) The Court has also considered the absence of material facts and particulars of the alleged threat alleged to have been given to the applicant which led him to filing of N.C. with D. N. Nagar Police Station.

(f) The Court has also taken into account the delay in the matter of investigation and reasons leading thereto.

(g) The Court has also taken into account strength of the complaint filed by the complainant and the material in support thereof together with the theory of rivalry amongst the senior officers working in the Co-operative Department of the State because of the likely promotion of the applicant in the cadre

of I.A.S.

(i) The Court has also taken into account the settled legal position which was required to be kept in mind while exercising discretionary jurisdiction so far as grant of anticipatory bail is concerned together with the necessity of protecting the personal liberty of the applicant, as against the right of the investigating agency to investigate the offence.

(j) The Court after taking judicial view of the matter, has struck balance between two competing interests of the society and went on to reject the prayer for anticipatory bail, for the reasons recorded with which it is not possible for me to disagree. The view taken by the Court below is a reasonable and possible view.

32. Having said so, one additional event needs to be referred which was not present in the Court below I have heard both the

conversations in my chamber as indicated in the opening part of this order and appreciated the same in the backdrop of the admitted second conversation dated 8.10.2007, which also compels me to reject the prayer for anticipatory bail.

33. Apart from above, I may also observe that even if the first conversation dated 29.6.2007 is excluded from consideration and only conversation dated 8.10.2007 is considered, which is a piece of evidence; admitted by the applicant on oath, one fails to understand; why the applicant ventured to entertain the complainant in his chamber and entered into conversation with him when his case was pending before him, on the top of it, it was not fixed for hearing on that day. There is no answer to this question. The conversation, if taken into account, certainly gives an indication of some previous talks between parties which definitely need to be investigated. Thus, looking to the nature of the offence and gravity thereof, its impact on the society, I do not think this Court would be justified in granting prayer for anticipatory bail in favour of the applicant.

34. Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

35. In the result, application is rejected.

36. At this stage, learned counsel for the applicant seeks time to surrender. Accordingly, he gives undertaking to this Court, on behalf of the applicant, that applicant will surrender on Monday, i.e. 5th November, 2007. In the meanwhile, i.e. on Saturday and Sunday, he will report to Asstt. Commissioner of Police Shri Arun More, Anti Corruption Bureau, Worli, Mumbai between 11.00 a.m. to 2.00 p.m. Order accordingly.

37. Parties to act on an authenticated copy of this order.

(V.C.DAGA,J)